

General Terms and Conditions – Deliveries and Services provided by IT IS AG, Landshut, Germany

§ 1 General Provisions

- (1) IT IS AG operates exclusively on the basis of the General Terms and Conditions stated here.
- (2) Any and all agreements that include an alteration, amendment or substantiation of these conditions of contract as well as specific arrangements and provisions shall be put down in writing. Should they be declared by representatives or vicarious agents of IT IS AG, they shall only be binding if IT IS AG has given its consent in writing.
- (3) This Agreement as well as the individual supplementary agreements shall be exclusively subject to the law of the Federal Republic of Germany to the exclusion of the validity of the UN Right of Purchase.
- (4) Insofar as the Customer is a businessman in the meaning of the German Commercial Code, a corporate body under public law or an administrator of special assets under public law or if he has no general place of jurisdiction in Germany, Landshut shall be place of jurisdiction for any and all disputes arising within the framework of the execution of this contractual relationship.

§ 2 Data Protection

The Customer has been informed on the scope, place and purpose of the collection, processing and use of the personal data necessary for the execution of orders. He consents to a possible collection, processing and use of personal data.

§ 3 Prices

Prices are going prices in accordance with the valid price lists. Upon receipt of an order by IT IS AG, the IT IS AG list prices valid at this point in time shall be binding for this order for a delivery time slot of 90 days or as stated on the sales quote. In the event of an alteration of an order that results in a postponing of the delivery date after these 90 days shall be treated like a new order for which the prices valid at the point in time of the receipt of the altered order shall apply. Deliveries and services shall be carried out at the prices and under the terms and conditions of the written conformation of order. The prices stated in it shall be binding. Insofar as no other agreements have been made in the individual cases, the prices are free reception point of the Buyer within the Federal Republic of Germany. The VAT valid at the point in time of billing shall be added. Unless otherwise agreed, payments shall be due immediate upon date of invoice, net, without any deductions. Invoices for customer services of all kinds shall be excluded; these shall be payable immediately upon receipt of the invoice without any deduction. In commercial dealings, IT IS AG shall be entitled to charge interest to the amount of 8% above the relevant valid base rate of the European Central Bank when the payment becomes due, otherwise in the event of a default of payment. As far as orders for the delivery of systems with a contract value exceeding Euro 50,000.00 (excluding VAT) are concerned, 50% of the purchase price shall be payable upon acknowledgement of order, 40% upon delivery and the remainder upon installation and after notice of readiness for operation has been given.

§ 4 Delivery Deadlines

The delivery deadlines stated in the confirmation of order are approximate deadlines. Should IT IS AG fall behind with delivery, IT IS AG only accepts liability for the damage that has been caused to the Customer on account of the delay if the delay is the result of a violation of material contractual obligations or of malice aforethought or gross negligence. Deliveries will only be carried out by IT IS AG under the proviso that IT IS AG itself is correctly supplied in time and does not have to answer for the non-availability of the goods. The Customer may claim damages as a result of non-performance, even after a time limit including threat of rejection has been fixed, only if the delay is to be attributed to malice aforethought or gross negligence or, in the event of slight negligence, to a violation of material contractual obligations. In the event of delays of delivery caused by acts of God, sovereign intervention, natural disasters, war, civil commotion, strike in company-owned operations, outside suppliers or carriers or caused by other circumstances not to be answered for by IT IS AG, IT IS AG shall be entitled to make up for the delivery after the reason for non-delivery has ceased to be. Both Parties, however, may rescind an agreement that has been concluded wholly or in part if one of the aforementioned events results in a delay of the delivery of more than six months after the agreed deadline. Further claims of the parties to the Agreement shall be excluded. IT IS AG shall be entitled to carry out partial deliveries. IT IS AG shall only be obligated to deliver systems after a binding agreement on the installation conditions at the site of installation has been made between the Customer and IT IS AG. If the Customer terminates for a reason that is not attributable to IT IS AG, the Customer shall be obligated to pay either a lump sum to the amount of 15% of the base price shown in the IT IS AG price list for the relevant product or the damage that is actually caused, upon request of IT IS AG. The Customer shall be entitled to show proof of the fact that IT IS AG has suffered a loss smaller than the one that has been claimed. The Customer may only exercise a right of retention on account of counterclaims that are based on the same contractual relationship. In the event of an ongoing business relationship, each individual order shall be deemed a separate contractual relationship. Offsetting against claims of IT IS AG shall only be admissible on the basis of uncontested claims or claims that have become res judicata.

§ 5 Passing of Risk

The risk shall pass to the Customer upon dispatch of the goods by IT IS AG.

§ 6 Reservation of Ownership

All deliveries of IT IS AG are carried out under reservation of ownership. If the Customer is a businessman, ownership of the goods and rights that have been delivered ("reserved goods") shall only pass on to the Customer upon receipt of all payments from the ongoing business relationship. The Customer shall not be entitled to pledge or to use as collateral or to process or transform the reserved goods before transfer of ownership. When objects subject to a reservation of ownership are processed or transformed, this shall always be carried out for IT IS AG. IT IS AG shall acquire joint property in the proportion of the value of the goods delivered by IT IS AG against the value of the entire system. Insofar as maintenance and servicing works become necessary, the Customer shall carry them out at his own expense at regular intervals. During the term of reservation of ownership, the Customer undertakes to ensure the reserved goods adequately against sinking or damaging through fire, water, burglary or theft in particular at his own expense and to allow them to examine the insurance policy upon request. The Customer assigns his insurance claims in this connection even now. IT IS AG accepts this assignment and undertakes to reassign the claims to the Customer provided that the reassignment shall become effective when and as soon as reservation of ownership has expired.

§ 7 Acceptance

During acceptance, IT IS AG shall show proof of the presence of the agreed properties as well as of the perfect and regular working order of the system. Acceptance shall include the complete contractual scope of work. Partial acceptances shall be admissible. Acceptance may not be unreasonably refused. It may not be refused in particular if there are no defects inhibiting operation. Neither may it be refused if no defects of the products have been identified with the diagnosis and testing programmes and/or procedures that have been developed by the relevant manufacturer for this purpose. The Customer shall inspect the service provided by IT IS AG within 3 days and confirm acceptance in writing. Should the Customer fail to confirm acceptance without delay within 3 days, IT IS AG may request them to do so in writing, fixing a period of time of 10 working days for handing over the statement. Acceptance shall be regarded as confirmed if the Customer fails to present his reasons for refusing acceptance within this period of time in writing. Insofar as the acceptance certificate lists defects and/or missing functions or faults, the date of acceptance shall be the first day on which the last defect has been removed and/or the last missing function has been integrated without fault. Several products may contain selected parts and parts that have been carefully overhauled and the performance of which is identical to the one of new parts. These parts are electronic components that are normally not subject to wear and tear.

§ 8 Warranty

IT IS AG shall warrant within the framework of the warranty regulations of the relevant manufacturer of the delivered products. If the goods are defective, IT IS AG shall be entitled to repair or exchange the product (subsequent performance). Exchanged parts shall become the property of IT IS AG without compensation. The Customer shall notify obvious defects within 14 days in writing; otherwise an assertion of the warranty claims shall be excluded. When subsequent performance has failed twice, the Customer shall always be entitled to claim a cut in remuneration (reduction) or rescission of the agreement (withdrawal) at his option. If the Customer decides to rescind the agreement after subsequent performance has failed, he shall not be entitled to further damage claims on account of the defect. As far as insignificant defects are concerned, the right to subsequent performance as well as rescission shall be excluded. The Customer's warranty rights shall cease to be applicable insofar as a defect is based on the fact that the Customer or a third party has altered products, used products improperly or repaired products without the consent of IT IS AG or if products have not been installed, serviced and maintained in accordance with the guidelines of IT IS AG and/or the manufacturer. Only the manufacturer's product description is agreed as definition for the quality of the goods as a matter of principle. Statements made in public, recommendations or advertisements of the manufacturer shall not present a description of the quality of the goods according to agreement at the same time. The warranty period shall be 12 months upon delivery of the goods.

§ 9 Claims for Damages

IT IS AG shall accept unlimited liability for damage that has been caused through wilful acts or acts of gross negligence. In addition, IT IS AG accepts liability for personal injuries and for damage according to the German Product Liability Law that is attributable to IT IS AG. IT IS AG also accepts liability for a non-accidental violation of material contractual obligations. In such a case, damages shall be restricted to damage that is typical of the agreement and to foreseeable damage. IT IS AG does not accept liability for the recovery of data unless IT IS AG has caused their destruction by acts of gross negligence or wilful acts and the Customer has ensured that this data can be recovered on the basis of data material that is kept ready in machine-readable form with a reasonable effort. As for the rest, liability on the part of IT IS AG shall be excluded. The above-mentioned exclusion shall also apply to employees and vicarious agents of IT IS AG. Possible claims for damages shall come under the statute of limitations within 12 months upon delivery of the goods. This shall not apply if IT IS AG can be accused of fraudulence.

§ 10 Software

If not addressed by a licensing agreement between IT IS AG and the Customer, the Customer is granted a non-exclusive right to use IT IS AG software as well as outside software delivered by IT IS AG (software developed by a software company independent of IT IS AG) and the relevant associated documentations and subsequent alterations for personal purposes or within the framework of his business operation or on a computer system. All further rights in the software and the documentations including copies and subsequent alterations shall remain with IT IS AG and/or the software supplier. A granting of sub-licences shall not be admissible. The Customer shall ensure that this software and these documentations are not made available to third parties without the previous written consent of IT IS AG. Copies may only be made for purposes of archiving, replacement or fault finding as a matter of principle; Sections 1 and 2 shall apply accordingly. The leasing of source programmes shall require a special written agreement. Insofar as the originals bear a note referring to a protection by copyright, this note shall also be integrated in the copies by the Customer. Unless otherwise agreed, the right of use shall be deemed granted upon confirmation of order and delivery of software, documentations and subsequent alterations respectively.

§ 11 Export Regulations

In the event of an exportation of products, the Buyer undertakes to comply with the German and American and other applicable (re-) export regulations and to inform his customers that the above-mentioned export and/or import regulations will apply in the event of a (re-) export.

§ 12 Partial Invalidity

Should individual provisions be completely or partially invalid, the remaining provisions shall remain unaffected thereof. Invalid provisions shall be replaced by provisions that come as close as possible to the economic purpose of the Agreement while safeguarding the Parties' mutual interests to a reasonable extent.